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No. 89-1192

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JULIUS GLINSEY, JR.,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS — FOURTH DISTRICT

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January, 1990

QUESTION PRESENTED FOR REVIEW

Did the Trial Court err when it denied the the Defendant-Petitioner's Motion to Quash the Arrest and Suppress the Evidence filed pursuant to the Fourth Amendment to the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS — FOURTH DISTRICT

The Petitioner, JULIUS GLINSEY, JR., respectfully requests that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois entered in this case on May 25, 1989 and the denial of his Petition for Leave to Appeal.

OPINIONS BELOW

The Opinion of the Appellate Court for the Fourth District of Illinois is reprinted on Appendix A to this Petition.

JURISDICTION

The judgment of the Appellate Court of Illinois was entered on May 25, 1989. A Petition for Leave to Appeal was taken to the Illinois Supreme Court. Said Petition for Leave to Appeal was denied by the Illinois Supreme Court on October 5, 1989. A Motion to Stay filed by the Petitioner was entered by the Illinois Supreme Court on October 26, 1989. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution

STATEMENT OF THE CASE

On February 1, 1988, LARRY SAVAGE, a cousin of the Petitioner, JULIUS GLINSEY, JR., drove GLINSEY's 1982 Oldsmobile into the Sears Automotive Center in Decatur, Illinois to have the brakes repaired.

After leaving the car there, the repair personnel of Sears began working on the aforementioned vehicle. Because the wheels on the vehicle had locks on them, the repairman began searching the car for the key to the locks.

While searching the trunk of the vehicle, the repairman found a shoe box with ammunition in it and a shotgun which was wrapped in a plastic garbage bag.

The Service Manager then called the Police Department who subsequently came to the Service Center. After viewing the aforementioned items, the Police asked the Manager to notify them when someone returned to pick up the vehicle.

Sometime later, LARRY SAVAGE returned and drove the vehicle out of the Center. The Police were called and they

proceeded to follow the 1982 Oldsmobile which was being driven by SAVAGE.

The Police stopped the vehicle SAVAGE was driving. JULIUS GLINSEY, JR., who was at that time driving LARRY SAVAGE's car, pulled over where the Police had stopped SAVAGE and got out of SAVAGE's car. The Police then asked him a number of questions regarding his identification and then placed him under arrest.

After placing him under arrest, GLINSEY was searched and a .38 caliber revolver was found on his person. The Police then searched the car GLINSEY was driving and found a green knapsack on the back seat of the car. A search of the knapsack revealed several guns and a number of packets of suspected cocaine.

JULIUS GLINSEY, JR. was placed into a squad car and transported to Police Headquarters. After he was taken out of the car, the Police removed the back seat of the car and found a packet of suspected cocaine. While in the station, another search of GLINSEY's person was made and another packet of suspected cocaine was found in his jacket.

Prior to trial, the Petitioner filed his Motion to Quash the Arrest and to Suppress the Evidence. After a hearing on the merits, the trial court denied the Petitioner's Motion. At the trial of the cause, the evidence that the Petitioner sought to suppress was admitted into evidence against him.

On appeal, the Petitioner raised the issue of the denial of the Motion to Quash the Arrest and Suppress the Evidence. The ruling of the trial court was affirmed.

ARGUMENT

THE APPELLATE COURT OF ILLINOIS DEPRIVED THE DEFENDANT-PETITIONER OF HIS FOURTH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCHES AND SEIZURES WHEN IT DENIED HIS MOTION TO QUASH THE ARREST AND SUPPRESS THE EVIDENCE.

On February 1, 1988, LARRY SAVAGE, a cousin of the Petitioner, JULIUS GLINSEY, JR., drove GLINSEY's 1982 Oldsmobile automobile to the Sears Automotive Center in Decatur, Illinois to have the brakes repaired. After SAVAGE left the car, the Service Department searched the trunk of the vehicle to find a key to unlock the wheel covers. While searching the trunk, the service attendant found a shoe box containing ammunition and a shotgun. The shotgun was wrapped in a plastic garbage bag and was in an area of the trunk inside the fender on the passenger side of the vehicle. The Service Manager then called the Police and the aforementioned items were subsequently seized as evidence. Officers of the Decatur Police Department instructed the Service Manager to contact them when the person returned to pick up the vehicle.

Subsequently, LARRY SAVAGE returned to the Automotive Center and picked up the car and left the center. The Police were called and they proceeded to follow LARRY SAVAGE and eventually stop him. The Petitioner, JULIUS GLINSEY, JR., who was driving another vehicle, saw the Police pull his cousin over. He then pulled the car he was driving over and got out of the car. The following questions were asked by the Police at the scene:

Q. Now, did you question Mr. Glinsey before you placed him under arrest?

A. Yes sir.

Q. And what, if anything, did you ask him?

A I asked him if the Oldsmobile belonged to him? He said it did.

Further, GLINSEY was asked if he owned the items of property contained inside the Oldsmobile. GLINSEY allegedly responded that they were his. GLINSEY was then arrested and his person was searched outside of the vehicle he was driving.

The arresting officer, STERLING MORRELL, testified that prior to the arrest he had neither seen GLINSEY with any weapons nor was told that anyone had seen him with a weapon. Further, the officer testified that the arrest and search occurred without benefit of a search warrant or an arrest warrant and in broad daylight while in the presence of other officers.

The Petitioner had produced a valid Driver's License when requested and did not make any furtive gestures which would have caused the officer to be in fear of his safety.

The United States Supreme Court in *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868 rules that where a police officer has a suspicion that a criminal activity may have occurred or may be occurring, and the person he is dealing with may be armed and dangerous, he may make reasonable inquiries of the suspect. Where the officer has reasonable fear for his own safety, or that of others, he may conduct a carefully limited search of the outer clothing of such suspect in an attempt to discover weapons. See also, *Sibron v. New York,* 392 U.S. 40, 88 S.Ct. 1889.

In the instant matter, although the Police Officer was aware of the shotgun and a box of ammunition being found in the trunk of the Petitioner's automobile, there was no evidence that (1) the weapon belonged to GLINSEY; (2) no one had seen GLINSEY with the shotgun or any other weapon; (3) that GLINSEY was in possession of the box of ammunition found in the trunk of the car; or (4) that GLINSEY was in possession of the car at the time the aforementioned items were discovered in

the trunk. In fact, the evidence then known to the Officer was that LARRY SAVAGE was in "possession" of the shotgun and ammunition at the time the items were found.

Before a police officer may seize and search a person, the officer must be able to point to particular facts from which he reasonably inferred that the person is armed and dangerous.

In the case at bar, the police officer who arrested and searched the Petitioner could not articulate a single particularized fact pursuant to *Terry, Sibron* or *Ybarra v. Illinois,* 444 U.S. 85, 100 S.Ct. 338, which would indicate that the Petitioner was armed and dangerous or had committed a crime.

CONCLUSION

For the foregoing reasons, the Petitioner, JULIUS GLINSEY, JR. respectfully requests that a writ of certiorari issue to the Supreme Court of Illinois so that its judgment may be reviewed.

Respectfully Submitted:

T. LEE BOYD, JR.

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January, 1990

APPENDIX A

No. 4-88-0497

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,
v.
JULIUS GLINSEY, JR.,
Defendant-Appellant,

Appeal from
Circuit Court
County of Macon
No. 88CF68

Honorable
John K. Greanias,
Judge Presiding.

ORDER

Defendant appeals his conviction of armed violence (Ill. Rev. Stat. 1987, ch. 38, par. 33A-2) based upon possession of a substance containing less than 15 grams of cocaine while armed with a weapon. He argues the trial court erred in denying his motion to quash his arrest and suppress evidence, failure of the trial court to *sua sponte* instruct the jury on the predicate offense of possession was reversible error, and he was found guilty of an uncharged offense.

We affirm.

At the hearing on the motion to quash the arrest and suppress evidence, Decatur police officer Sterling Morrell testified that on February 1, 1988, he was sent to the Sears Automotive Center. An employee directed him to an Oldsmobile passenger car which was being repaired. The trunk of the vehicle was open. Morrell looked inside and observed a .12 gauge shotgun and box of ammunition. Morrell removed the shotgun. He then determined the vehicle was registered to defendant and that defendant did not possess a firearm owner's identification (FOID) card.

Morrell and another police officer waited for someone to return for the vehicle. After this occurred, Morrell stopped the Oldsmobile a short distance from the store. Larry Savage, defendant's cousin, was driving the Oldsmobile. The police arrested Savage. While the police were talking to Savage, defendant, who was driving a brown Buick passenger car, parked the Buick and approached the officers. Defendant produced his driver's license. Morrell asked defendant whether he owned the Oldsmobile and its contents. Defendant stated that he did. Morrell then asked whether defendant possessed an FOID card. Defendant responded that he did not and Morrell arrested him. Morrell did not have a warrant to arrest defendant or search him. He did not see defendant carrying a weapon. Defendant did not make any furtive gestures prior to his arrest.

Police seized a weapon from defendant's jacket pocket. After a further search, conducted at the police station, police seized a small packet of suspected cocaine from defendant's pocket. An additional packet was found in the police car which had been used to transport defendant to the station. Defendant was the first person transported in the police car on that day. A search of the Buick, the car driven by defendant, revealed a green backpack which contained several weapons, several large packages of a white powdery substance, a scales, and papers. The trial court denied defendant's motion to quash the arrest and suppress the evidence.

Initially, defendant argues the trial court erred in denying his motion to quash the arrest and suppress evidence because the police had no reasonable grounds to stop him pursuant to *Terry v. Ohio* (1968), 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, and no probable cause to arrest him existed. Defendant maintains no probable cause to arrest existed because Savage was driving the vehicle from which the shotgun had been seized.

A trial court's finding of probable cause will not be overturned unless it is contrary to the manifest weight of the evidence. (*People v. Hall* (1987), 164 Ill. App. 3d 770, 518 N.E.2d 275, *cert. denied* (1988), U.S. , 102 L. Ed. 2d 143, 109 S. Ct. 174.) In the instant case, defendant voluntarily stopped and approached police officers who were questioning Savage. An investigatory stop of defendant pursuant to *Terry* did not take place. A warrantless arrest may be made where the arresting officer has reasonable grounds to believe the person arrested has committed an offense. (Ill. Rev. Stat. 1987, ch. 38, par. 107-2(1)(c); *People v. Johnson* (1986), 150 Ill. App. 3d 1075, 502 N.E.2d 304.) Reasonable grounds is synonymous with probable cause in this context.

Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution in believing an offense has been committed and the person arrested committed the offense. (*People v. Wingron* (1988), 167 Ill. App. 3d 313, 521 N.E.2d 130.) More than a mere suspicion is required. However, the arresting officer need not possess evidence sufficient to convict the defendant. (*People v. Lippert* (1982), 89 Ill. 2d 171, 432 N.E.2d 605; *Wingren,* 167 Ill. App. 3d 313, 521 N.E.2d 130.) The existence of probable cause to arrest is based upon practical consideration of the circumstances. *Hall,* 164, Ill. App. 3d 770, 518 N.E.2d 275.

Probable cause to arrest defendant existed here. Officer Morrell had seized a shotgun from the vehicle which defendant owned, defendant admitted owning the vehicle and its contents, and did not possess a valid FOID card. Police officers could conclude defendant possessed a shotgun contrary to section 83-2 of "An Act relating to the acquisition, possession, and transfer of firearms and firearm ammunition.*** " (Ill. Rev. Stat. 1987, ch. 38, par. 83-1 *et seq.*) The trial court did not err in denying defendant's motion to quash his arrest.

Defendant argues the jury should have been instructed on the offense of possession of less than 15 grams of a substance containing cocaine (Ill. Rev. Stat. 1987, ch. 56½, par. 1402(b)), because this was a predicate felony for the armed violence charge. Defendant did not object to the lack of an issues instruction on the predicate felony at trial. Absent plain error, both the trial objection and a written post-trial motion raising the issue are required to preserve review of issues which could have been addressed at trial. (*People v. Enock* (1988), 122 Ill. 2d 176, 522 N.E.2d 1124, *cert. denied* (1988), U.S. , 102 L. Ed. 2d 263, 109 S. Ct. 274.) Failure to object at trial to an asserted error in jury instructions waives the question. No party may raise on appeal the failure to give an instruction unless he tendered it at trial. (*People v. Tannenbaum* (1980), 82 Ill. 2d 177, 415 N.E.2d 1027.) Waiver concepts have been applied to the failure to instruct on a predicate offense. *People v. Moon* (1982), 107 Ill. App. 3d 568, 427 N.E.2d 823.

In the instant case, the issue is whether the failure of the trial court to *sua sponte* give an issues instruction on possession of less than 15 grams of a substance containing cocaine resulted in an unfair trial. It did not. The jury was given a definitional instruction of possession. Possession of "less than 15 grams of cocaine" is "possession" of a controlled substance. The issues instruction in this case would have substantively repeated the definition of possession. (See Illinois Pattern Jury Instructions, Criminal, Nos. 17.12, 17.13 (2d ed. 1981).) Lack of a specific issues instruction on the uncharged predicate felony did not deny defendant a fair trial.

Defendant next argues he was convicted of an uncharged offense. The verdict returned by the jury found defendant guilty of armed violence based upon possession of the Titan Tiger .38 caliber weapon. Defendant contends that since the information did not specifically allege the model of the weapon and the verdict form did not refer to count III of the informa-

tion, he was found guilty of an uncharged offense. Defendant in count III was charged with armed violence in that while armed with a dangerous weapon, a pistol, he knowingly and unlawfully had in his possession less than 15 grams of cocaine. An indictment need not set forth the specific details of the offense if it apprises defendant of the precise offense charged with sufficient specificity for him to prepare his defense and bar future prosecutions. (*People v. Wisslead* (1985), 108 Ill. 2d 389, 484 N.E.2d 1081; *People v. Strong* (1986), 151 Ill. App. 3d 28, 502 N.E.2d 744.) Morrell testified that police removed the Titan Tiger revolver from defendant's pocket. The verdict form stated the name of the revolver. The use of a more specific verdict form did not cause defendant to be convicted of an uncharged offense.

For the above reasons, we affirm the trial court.

Affirmed.

McCULLOUGH, P.J., with LUND and KNECHT, JJ., concurring.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, *CLERK*
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
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October 5, 1989

MR. T. LEE BOYD, JR.
T. LEE BOYD, JR. AND ASSOCIATES
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Chicago, IL 60604

No. 68860— People State of Illinois, respondent, v. Julius Glinsey, Jr., petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 27, 1989.